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Attorneys for Plaintiffs/Counter-Defendants

CDx Diagnostics, Inc. and

Shared Medical Resources. LLC

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CDX DIAGNOSTICS, INC., and
SHARED MEDICAL RESOURCES, LLC,

Plaintiffs,

v.

HISTOLOGICS, LLC, et al.

Defendants.

AND RELATED COUNTERCLAIM

Case No. CV13-07909 DOC (RNBx)
Hon. David O. Carter

**NOTICE OF MOTION AND
PLAINTIFFS' MOTION TO STAY
THIS ACTION PENDING *INTER
PARTES* REVIEW OF '044 PATENT**

**[MEMORANDUM OF POINTS AND
AUTHORITIES: DECLARATION OF
PETER BERGER, AND PROPOSED
ORDER FILED CONCURRENTLY
HEREWITH]**

Date: December 22, 2014

Time: 8:30 a.m.

Courtroom: 9D

1 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on December 22, 2014 at 8:30 a.m. in Courtroom
3 9D of the above-captioned Court before the Honorable David O. Carter, Plaintiffs CDx
4 Diagnostics, Inc. and Shared Medical Resources, LLC (“Plaintiffs”) will and hereby do
5 move the Court for an order staying this action pending final resolution of an *inter partes*
6 review proceeding (“IPR”) filed by a third party and instituted by the Patent Trial and
7 Appeal Board in regards to the U.S. Patent No. 6,258,044 (“the ‘044 Patent”), the same
8 patent at issue in this lawsuit. Plaintiffs seek a stay on the basis that nearly all of the
9 relevant patent claims of the ‘044 Patent are subject to the third party IPR.

10 This motion is based on this Notice, the Memorandum of Points and Authorities and
11 Declaration of Peter L. Berger filed concurrently herewith, and all papers and records
12 already on file with the Court.

13 Pursuant to Local Rule 7-3, counsel for Plaintiffs (Peter Berger) initiated a meet and
14 confer with counsel for Defendant Histologics, LLC (Mark Riera) regarding the intent to
15 file the instant motion via e-mail on October 28, 2014, and counsel telephonically
16 conferred regarding the same on approximately October 29 or 30. Counsel for the Parties
17 continued to participate in a meaningful discussion of this Motion for the next two weeks,
18 up to and including November 11, 2014.

19 WHEREFORE, Plaintiffs respectfully request that the Court enter an order staying
20 this action in its entirety pending resolution of pending final resolution of the third-party
21 IPR regarding the ‘044 Patent.

22
23 Dated: November 19, 2014

ONE LLP

24 By: /s/ Nathaniel Dilger
25 Nathaniel L. Dilger, Esq.
26 -and-

LEVISOHN BERGER LLP

27 By: /s/ Peter Berger
28 Peter L. Berger (*Pro Hac Vice*)
Attorneys for Plaintiffs and Counter-Defendants